

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

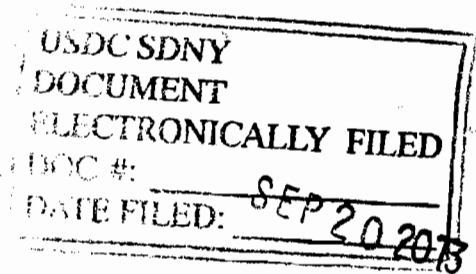
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

YORKVILLE ADVISORS, LLC, MARK
ANGELO and EDWARD SCHINIK,

Defendants.



OPINION AND ORDER

12 Civ. 7728 (GBD)

GEORGE B. DANIELS, United States District Judge:

By letter dated August 22, 2013, the Securities Exchange Commission ("SEC") requested leave to amend its complaint (ECF 1) to address certain pleading deficiencies described in the Court's August 2, 2013 Memorandum Decision and Order (ECF 38) which denied Defendants' motion to dismiss the complaint. In the alternative, the SEC requests a pre-motion conference in advance of it moving to amend its complaint. The SEC attached a copy of its proposed amended complaint ("PAC") to its August 22 letter. Defendants filed their answer to the original complaint on August 14, 2013. The SEC's request for leave to amend its complaint is DENIED as unnecessary. The SEC's request for a pre-motion conference is also DENIED.

"Leave to amend should be freely granted, but the district court has the discretion to deny leave if there is a good reason for it, such as futility, bad faith, undue delay, or undue prejudice to the opposing party." *Min Jin v. Metro. Life Ins. Co.*, 310 F.3d 84, 101 (2d Cir. 2002) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); Fed.R.Civ.P. 15(a). This Court denied Defendants'

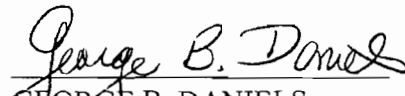
motion to dismiss on the grounds that the SEC's factual allegations were sufficient to state a cause of action for securities fraud. The PAC does not allege any new claims or misrepresentations. Rather, it attempts to supplement the SEC's previous claims with additional allegations of materiality and scienter, apparently to broaden its theory of liability. Although the proposed amendments "might improve the form of [the SEC's] complaint, the Federal Rules [of Civil Procedure] reject the approach that pleading is a game of skill." *Baron v. Feder*, 04 Civ. 4262, 2005 WL 2659097, *3 (E.D.N.Y. Oct. 12, 2005) (denying motion to dismiss and finding Plaintiffs' cross-motion to amend unnecessary) (citing *Conley v. Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); Fed.R.Civ.P. 8(f); *Alexander v. Unification Church of America*, 634 F.2d 673, 678 (2d Cir.1980)). Because the original complaint contains allegations sufficient to state a claim for securities fraud and none of the claims were dismissed, Defendants have adequate notice of the SEC's potentially sustainable claims. The SEC's proposed amendments are therefore unnecessary to state its claims for relief.

Plaintiff SEC's request to file its Amended Complaint, or in the alternative for a pre-motion conference to discuss the motion, is DENIED.

Dated: September 20, 2013
New York, New York

SEP 20 2013

SO ORDERED


GEORGE B. DANIELS
United States District Judge